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The assignment of a mere chose in action, not subject to legal process and of uncertain value, given to secure an honest debt, will not be set aside by this court as fraudulent in law because the surplus, if any (there actually being a deficit), was reserved to the assignors by a separate instrument, for the recording of which there was no provision, after two courts have held that the assignment was not made with intent to hinder and defraud creditors and as matter of law had no such result. *Merillat v. Hensey*, 333.

2. *Of chose in action; reservation by assignor of amount in excess of debt as evidence of fraud.*

Reservation to the assignor of surplus of a chose in action given in payment of a debt does not of itself constitute fraud in law. To be fraud in law the reservation must be of some pecuniary benefit to the assignor at the expense of creditors and a prime purpose of the conveyance. Section 1120, Code of the District of Columbia. *Ib.*

3. *Of chose in action in payment of debt; excessive amount as evidence of fraud.*

The fact that the amount alleged to be due on an unliquidated chose in action is greater than the amount of the debt in payment of which it is assigned is not necessarily evidence of fraud against other creditors; and where the amount actually recovered is less than the amount of the debt this court will not disturb the finding of both courts below that there was no fraud. *Ib.*

4. *Of chose in action; when effective.*

Where, as in the District of Columbia, the assignment of a chose in action does not have to be recorded and there is no way in which constructive notice can be given, the assignment, if valid upon its face, is ineffective only in case of actual bad faith established by the facts. *Ib.*

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The privileges and immunities of Federal citizenship do not prevent such proper governmental restraint upon the conduct or property of citizens as may be necessary for the general good. *Tiger v. Western Investment Co.*, 286.

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By virtue of its power to regulate interstate and foreign commerce Congress may enact laws for the safeguarding of persons and property in interstate transportation and may restrict the hours of labor of employ  s connected with such transportation. *Baltimore & Ohio R. R. Co. v. Interstate Com. Comm.*, 612.

2. *To regulate interstate commerce; effect of involution of intrastate commerce.*

The power of Congress to make regulations in regard to agencies for interstate commerce is not defeated by the fact that the agencies regulated are also connected with intrastate commerce. *Ib.*

See CONSTITUTIONAL LAW, 30, 31;      NAVIGABLE WATERS, 1, 4;  
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The act of March 4, 1907, 34 Stat. 145, c. 2939, regulating the hours of labor of railway employ  s engaged in interstate commerce and requiring carriers to make reports in regard thereto, is not unconstitutional as beyond the power of Congress because it applies to railroads and employ  s engaged in intrastate business. *Employers' Liability Cases*, 207 U. S. 463, distinguished. *Baltimore & Ohio R. R. Co. v. Interstate Com. Comm.*, 612.

See INTERSTATE COMMERCE, 1, 7;  
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The charter of this transportation company held not to contain any provisions giving it such contract right to use its vehicles for advertising purposes as rendered a subsequent ordinance prohibiting such use unconstitutional under the contract clause of the Constitution. *Fifth Avenue Coach Co. v. New York*, 467.

3. *Contracts; provisions in corporate charter not within protection of contract clause.*

Provisions in a corporate charter which are beyond the power of the

legislature to grant are not within the protection of the contract clause of the Federal Constitution. *Texas & New Orleans R. R. Co. v. Miller*, 408; *Texas & New Orleans R. R. Co. v. Gross*, 417.

4. *Contracts; provision in charter of railroad exempting from liability not contract within protection of Constitution.*

A provision in its charter exempting a railroad company from liability for death of employés, even if caused by its own negligence, does not amount to an irrevocable contract within the protection of the Federal Constitution, but is as much subject to future legislative action as though embodied in a separate statute. *Ib.*

5. *Contracts; protection of charter rights; to what subject.*

The protection of charter rights by the contract clause of the Federal Constitution is subject to the rule that a legislature cannot bargain away the police power, or withdraw from its successors the power to guard the public safety, health and morals. *Ib.*

6. *Contracts; act of instrumentality as law of State within meaning of clause.*

A legislative act by an instrumentality of the State exercising delegated authority is of the same force as if made by the legislature and is a law of the State within the meaning of the contract clause of the Constitution. *Grand Trunk Western Ry. Co. v. Indiana R. R. Comm.*, 400.

7. *Contract impairment; limitation of charter rights of corporation.*

A contract with a corporation is subject to the limitations of the charter rights of the corporation and is not impaired within the meaning of the contract clause of the Constitution by subsequent legislation that does not extend such limitations. *Fifth Avenue Coach Co. v. New York*, 467.

8. *Contract impairment; effect of law relating to matters beyond scope of contract.*

A contract cannot be impaired, within the meaning of the contract clause of the Constitution, by a law which relates to matters beyond the scope of the contract as construed according to the usual meaning of the words used. *Grand Trunk Western Ry. Co. v. Indiana R. R. Comm.*, 400.

9. *Contract impairment. Same.*

A contract between two railroads for maintaining the physical cost of a crossing and guarding it by good and substantial semaphores

or other signals is not impaired by a subsequent act requiring an interlocking system and apportioning the expense in a different manner than provided in the contract. The contract did not embrace such a system. *Ib.*

10. *Contracts; liberty of; effect of restriction as to hours of labor.*

The length of time employed has a direct relation to efficiency of employés, and the imposition of reasonable restrictions in regard thereto is not an unconstitutional interference with the liberty of contract. (*C., B. & Q. R. R. Co. v. McGuire*, 219 U. S. 549.) *Baltimore & Ohio R. R. Co. v. Interstate Com. Comm.*, 612.

*See PRACTICE AND PROCEDURE*, 3.

11. *Due process of law; deprivation of property without; validity of act of Feb. 10, 1899, relative to assessment of property in District of Columbia.*

The act of February 10, 1899, 30 Stat. 834, c. 150, extending Rhode Island avenue and authorizing assessments for benefits on property within the assessment district created by the act, is not unconstitutional as depriving owners within the district of their property without due process of law either because not providing sufficient notice or as arbitrarily assessing one-half the damages upon property within the designated district. *Briscoe v. District of Columbia*, 547.

12. *Due process of law; property rights; compensation; validity of condemnation proceeding.*

The Fourteenth Amendment forbids a State from taking private property for public use without compensation, *C., B. & Q. R. R. Co. v. Chicago*, 166 U. S. 226, but where the State provides adequate machinery for ascertaining compensation on notice and hearing which were availed of and there was no ruling by the state court which prevented compensation for property actually taken, there is no lack of due process because of the amount awarded, even if only nominal. *Appleby v. Buffalo*, 524.

13. *Due process of law; equal protection of the law; validity of Massachusetts Savings Bank Act of 1907.*

A statute directing that savings banks turn over to the proper state officers money in accounts inactive for thirty years and where the depositor cannot be found, with provisions for the payment over to the depositor or his heirs on establishment of right, does not deprive savings banks of their property without due process of law and is not a denial of equal protection of the law because it

applies only to savings banks, the classification not being unreasonable; and so held as to the statute of Massachusetts to that effect. *Provident Savings Institution v. Malone*, 660.

See CRIMINAL LAW, 3; INTERSTATE COMMERCE, 7;  
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14. *Equal protection of the law; individual and aggregate rights.*

Where rights exist to one they exist to all of the class to which that one belongs. *Fifth Avenue Coach Co. v. New York*, 467.

15. *Equal protection of the law; classification for regulation; validity of New York ordinance prohibiting advertising vehicles in certain streets.*

Classification based on reasonable distinctions is not an unconstitutional denial of equal protection of the laws; and so held that an ordinance of the city of New York prohibiting advertising vehicles in a certain street is not unconstitutional as denying equal protection to a transportation company operating stages on such street either because signs of the owners may be displayed on business wagons, or because another transportation company may display advertising signs on its structure. There is a purpose to be achieved, as well as a distinction, which justifies the classification. *Ib.*

16. *Equal protection of the law; validity of classification for regulation of savings from other banks.*

There is a special reason for protecting depositors of savings banks and there is a difference between them and deposits in other banks that affords a reasonable basis for classification in legislation. *Provident Savings Institution v. Malone*, 660.

*See Supra*, 13.

*Extradition. See EXTRADITION*, 3.

17. *Freedom of speech; effect of order of court restraining publication in pursuance of boycott, as abridgment of.*

An order of a court of equity, restraining defendants from boycotting complainant by publishing statements that complainant was guilty of unfair trade, does not amount to an unconstitutional abridgment of free speech; the question of the validity of the order involves only the power of the court to enjoin the boycott. *Gompers v. Bucks Store & Range Co.*, 418.

18. *Full faith and credit; effect of decision of court of State construing foreign statute, to violate.*

Where an action is commenced in the courts of one State, based on a

right given by the statute of another State provided it be commenced within a specified period, which has not expired, the omission of the plaintiff to plead the statute may be cured by the defendant pleading the statute, although the answer may not be filed until after the period of limitation has expired; and the decision of the state court to that effect does not violate the full faith and credit clause of the Federal Constitution, and involves no Federal question. *Texas & New Orleans R. R. Co. v. Miller*, 408; *Texas & New Orleans R. R. Co. v. Gross*, 417.

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19. *Self-incrimination; right does not extend to appropriation of property.*

The right under the Fifth Amendment not to be compelled to be a witness against oneself is not a right to appropriate property that may tell one's story. *Matter of Harris*, 274.

20. *Self-incrimination; effect of order requiring bankrupt to surrender books to receiver.*

A bankrupt is not deprived of his constitutional right not to testify against himself by an order requiring him to surrender his books to the duly authorized receiver. *Counselman v. Hitchcock*, 142 U. S. 547, distinguished. *Ib.*

21. *Self-incrimination; protection to which officer of corporation entitled.*

An officer of a corporation is protected by the self-incrimination provisions of the Fifth Amendment against the compulsory production of his private books and papers, but this privilege does not extend to books of the corporation in his possession. *Wilson v. United States*, 361.

22. *Self-incrimination; protection to which officer of corporation entitled.*

An officer of a corporation cannot refuse to produce documents of a corporation on the ground that they would incriminate him simply because he himself wrote or signed them, and this even if indictments are pending against him. *Ib.*

23. *Self-incrimination; right of corporation and of officer thereof to plead privilege.*

A corporation cannot plead a privilege against self-incrimination

under the Fifth Amendment; nor can an officer of a corporation plead that the immunity guaranteed by that amendment relieves him personally from making records from the books and papers of the corporation. (*Wilson v. United States*, ante, p. 361.) *Baltimore & Ohio R. R. Co. v. Interstate Com. Comm.*, 612.

24. *Self-incrimination; right of corporation defendant in suit under § 4965, Rev. Stat.*

A corporation defendant in a suit to enforce penalties under § 4965, Rev. Stat., for infringement of copyright is not entitled under the Fourth or Fifth Amendment to object to the admission of evidence of entries in its books produced under a subpoena *duces tecum*. (*Wilson v. United States*, ante, p. 361.) *American Lithographic Co. v. Werckmeister*, 603.

25. *Self-incrimination; right of officer of corporation having possession of and being called upon to produce its books.*

A subpoena *duces tecum*, which is suitably specific and properly limited in its scope, and calls for the production of documents which, as against their lawful owner to whom the writ is directed, the party procuring its issuance is entitled to have produced, does not violate the unreasonable search and seizure provisions of the Fourth Amendment, and the constitutional privilege against testifying against himself cannot be raised for his personal benefit by an officer of the corporation having the documents in his possession. *Wilson v. United States*, 361.

26. *Self-incrimination; protection to which physical custodian of incriminating documents entitled.*

Physical custody of incriminating documents does not protect the custodian against their compulsory production. The privilege which exists as to private papers cannot be maintained. *Ib.*

27. *Self-incrimination; party in proceeding in criminal contempt entitled to protection.*

In criminal proceedings for contempt the party against whom the proceedings are instituted is entitled to the protection of the constitutional provisions against self-incrimination. *Gompers v. Bucks Stove & Range Co.*, 418.

28. *Self-incrimination; waiver of immunity by conduct on part of officer of corporation; quære as to.*

*Quære* whether if a privilege to refuse to produce documents of a corporation in response to a subpoena *duces tecum* does exist the per-

son entitled to claim it may not waive it by his conduct. *Dreier v. United States*, 394.

See CORPORATIONS, 4, 5, 8, 9.

29. *States; equality of.*

The Constitution not only looks to an indestructible union of indestructible States, *Texas v. White*, 7 Wall. 700, 725, but to a union of equal States as well. *Coyle v. Oklahoma*, 559.

30. *States; admission into Union; power of Congress; equality of States.*

The power given to Congress by Art. IV, § 3, of the Constitution is to admit new States to this Union, and relates only to such States as are equal to each other in power and dignity and competency to exert the residuum of sovereignty not delegated to the Federal Government. *Ib.*

31. *States; duty of Congress to guarantee republican form of government; power of Congress in respect of.*

The constitutional duty of Congress of guaranteeing to each State a republican form of government does not import a power to impose upon a new State, as a condition to its admission to the Union, restrictions which render it unequal to the other States, such as limitations upon its power to locate or change its seat of government. *Ib.*

32. *States; immunity from suit; application of Eleventh Amendment.*

With the exception named in the Constitution every State has absolute immunity from suit; and the Eleventh Amendment applies not only where the State is actually named as a party but where the suit is really against it although nominally against one of its officers. *Hopkins v. Clemson College*, 636.

33. *States; immunity from suit; public agents amenable for own torts.*

Immunity from suit is a high attribute of sovereignty and a prerogative of the State itself which cannot be availed of by public agents when sued for their own torts. *Ib.*

34. *States; immunity from suit; suit to enjoin enforcement of void law not within.*

While the State as a sovereign is not subject to suit, cannot be enjoined, and the State's officers cannot be restrained from enforcing the State's laws or held liable for consequences of obedience thereto, a void law is neither a law or command but a nullity conferring no authority and affording no protection or immunity from suit. *Ib.*

35. *States; immunity from suit; public corporations and political subdivisions not entitled.*

Neither public corporations nor political subdivisions are clothed with the immunity from suit which belongs to the State alone; and while they may be relieved from responsibility to a wider degree than individuals would be they must make the defense and cannot rely on immunity. *Ib.*

36. *States; immunity from suit; who entitled to claim; application where State necessary party.*

In this case held that an agricultural college corporation was not such an agent of the State as to be immune under the Eleventh Amendment from suit for damages caused by erection of a dyke and consequent overflow of plaintiff's property; but also held that as the dyke was on property belonging to the State, the State would be a necessary party to the suit in order to decree removal, and in the absence of consent to be sued the court had no jurisdiction to decree removal. *Ib.*

37. *States; immunity from suit; application where State a necessary party.*

Although parties erecting a dyke on property belonging to the State may not, under the Eleventh Amendment, be immune from suit, the State is a necessary party to a suit to remove the dyke and it is beyond the jurisdiction of the court to make a decree to that effect. *Ib.*

38. *Unreasonable searches and seizures; effect of report required by § 4 of Act to Regulate Commerce as.*

Under § 4 of the Act to Regulate Commerce the Interstate Commerce Commission has power to require carriers to make reports regarding the hours of labor of such employes as are subject to the act of March 4, 1907, and the requirement of such reports does not constitute an unreasonable search or seizure within the meaning of the Fourth Amendment. *Baltimore & Ohio R. R. Co. v. Interstate Com. Comm.*, 612.

*See Supra*, 25.

## CONSTRUCTION OF STATUTES.

*See STATUTES*, A.

## CONTEMPT OF COURT.

1. *Civil and criminal contempts differentiated.*

Civil and criminal contempts are essentially different and are gov-



erned by different rules of procedure. *Gompers v. Bucks Stove & Range Co.*, 418.

2. *Civil contempt; what amounts to; punishment for.*

A proceeding, instituted by an aggrieved party to punish the other party for contempt for affirmatively violating an injunction in the same action in which the injunction order was issued, and praying for damages and costs, is a civil proceeding in contempt, and is part of the main action, and the court cannot punish the contempt by imprisonment for a definite term; the only punishment is by fine measured by the pecuniary injury sustained. *Ib.*

3. *Procedure and punishment for civil and criminal contempt at variance.*

There is a substantial variance between the procedure adopted and punishment imposed, when a punitive sentence appropriate only to a proceeding for criminal contempt is imposed in a proceeding in an equity action for the remedial relief of an injured party. *Ib.*

4. *Effect of settlement of suit between parties on right of court to pursue violator of injunction issued therein.*

The fact that the party aggrieved by the violation of an injunction deprives himself, by settling the main case, of the right to pursue the violator for contempt does not prevent the court, whose order was violated, from instituting proceedings to vindicate its authority; and in this case the dismissal of the civil contempt proceeding is without prejudice to the power and right of the court whose injunction was violated to punish for contempt by proper proceedings. *Ib.*

5. *Acting on suggestion of Circuit Court of Appeals not contempt of lower court.*

Where the Circuit Court has sustained the trade-mark but the Circuit Court of Appeals has suggested a form of label that the defendant might use, defendant should not be punished for contempt for using such a form. *Baglin v. Cusenier Co.*, 580.

See CONSTITUTIONAL LAW, 27;  
CORPORATIONS, 6.

CONTRACTS.

*Freedom to contract defined.*

Freedom to contract is the essence of freedom from undue restraint on the right to contract. *Standard Oil Co. v. United States*, 1.

See CONSTITUTIONAL LAW, 2-10;  
PRACTICE AND PROCEDURE, 3;  
RESTRAINT OF TRADE.

## CONVEYANCES.

See ASSIGNMENTS;

INDIANS, 5, 6, 7.

## COPYRIGHTS.

1. *Forfeiture for infringement prescribed by § 4965, Rev. Stat.*

The forfeiture for infringement of copyright prescribed by § 4965, Rev. Stat., is not only for every copy found in possession of the infringer, but in the alternative for every copy by him sold. *American Lithographic Co. v. Werckmeister*, 603.

2. *Actions for infringement; to what owner entitled under § 4965, Rev. Stat.*

Under § 4965, Rev. Stat., no penalty for infringement can be recovered with respect to prints, photographs, etc., except for sheets found in defendant's possession, and there cannot be two actions as to the same copies, one for replevin and the other for penalty; but with respect to paintings, statues and statuary an action can be brought for penalties on copies sold by the infringer and not included in those replevied in another action. *Werckmeister v. American Tobacco Co.*, 207 U. S. 375; *Hills v. Hoover*, 220 U. S. 334, distinguished. *Ib.*

See CONSTITUTIONAL LAW, 24.

## CORPORATIONS.

1. *Power of State to limit use of property of.*

Whatever the general rights as to corporate property may be, a State, in granting a charter, may define and limit the use of property necessary to the exercise of the granted powers. *Fifth Avenue Coach Co. v. New York*, 467.

2. *Duty to produce books and papers when required.*

A corporation is under a duty to produce records, books and papers in its possession when they may be properly required in the administration of justice. *Wilson v. United States*, 361.

3. *Duty to respond to subpoena duces tecum; effect of §§ 877, 879, Rev. Stat., and Sixth Amendment.*

A corporation is not relieved from responding to a subpoena *duces tecum* or from producing the documents required by reason of the provisions of §§ 877 and 829, Rev. Stat., or those of the Sixth Amendment to the Constitution. *Ib.*

4. *Duty to submit books and papers on judicial process; right to resist on ground of self-incrimination.*

Under the visitatorial power of the State, and the authority of Con-

gress over corporate activities within the domain subject to Congress, a corporation must submit its books and papers whenever properly required so to do and cannot resist on the ground of self-incrimination, even if the inquiry may be to detect and prevent violations of law. (*Hale v. Henkel*, 201 U. S. 43, 74.) *Ib.*

5. *Production of books and papers; law governing.*

Notwithstanding English views as to the extent of protection against self-incrimination the duties of corporations and officers thereof are to be determined by our laws. *Ib.*

6. *Officers; command to corporation as command to officers thereof.*

A lawful command to a corporation is in effect a command to its officers, who may be punished for contempt for disobedience of its terms. *Ib.*

7. *Officers; right to withhold corporate documents from grand jury.*

An officer cannot withhold from a grand jury corporate documents in his possession because the inquiry was directed against the corporation itself. *Ib.*

8. *Officer's duty to produce books, even though they may tend to incriminate it or him.*

An officer of a corporation cannot withhold its books to save it, or if he is implicated in its violation of law, to protect himself, from disclosures, although he may decline to utter on the witness stand any self-incriminating word. *Ib.*

9. *Officers; right to refuse to produce books and papers on ground of personal self-incrimination.*

*Wilson v. United States*, ante, p. 361, followed to effect that an officer of a corporation cannot refuse to produce books and papers of the corporation in response to a subpoena *duces tecum* on the ground that the contents thereof would tend to incriminate him personally. *Dreier v. United States*, 394.

See CONSTITUTIONAL LAW, 2, 3, INTERSTATE COMMERCE, 3, 5, 7;  
4, 5, 7, 21-25, 28, 35, 36; RESTRAINT OF TRADE, 21;  
COURTS; WRIT AND PROCESS, 2.

## COURTS.

*Competency of courts of State to construe its laws.*

The courts of a State are competent to construe the laws of the State and to determine what powers a corporation derives thereunder, and the use to which such corporation may employ its necessary

property; and so *held* as to uses to which stages may be put by a transportation company. *Fifth Avenue Coach Co. v. New York*, 467.

<i>See</i> BANKRUPTCY;	PUBLIC LANDS, 13;
CONTEMPT OF COURT;	RESTRAINT OF TRADE, 11,
INDIANS, 2;	12;
PENALTIES AND FORFEITURES,	STATUTES, A 5, 6;
1, 2;	WRIT AND PROCESS, 5.

### CREDITS.

*See* TAXES AND TAXATION, 1-6, 9.

### CRIMINAL LAW.

1. *Overt act retrospectively guilty, when.*

An overt act becomes retrospectively guilty when the contemplated result ensues. *Strassheim v. Daily*, 280.

2. *Pleading; objections to form and verification.*

Objections as to form and verification of pleading must be taken by accused before pleading general issue. *Dowdell v. United States*, 325.

3. *Presence of accused; presumption of, in appellate court, when represented by counsel.*

Although due process of law requires the accused to be present at every stage of the trial, it does not require accused to be present in an appellate court where he is represented by counsel and where the only function of the court is to determine whether there was prejudicial error below. *Ib.*

4. *Punishment; power of State to punish one committing crime done outside its jurisdiction.*

A State may punish one committing crimes done outside its jurisdiction for the purpose of producing detrimental effects within it when it gets the criminal within its power. *Strassheim v. Daily*, 280.

5. *Punishment by State of one committing fraud while outside its borders.*

Commission of the crimes alleged in this indictment—bribery of a public officer and obtaining public money under false pretenses—warrants punishment by the State aggrieved even if the offender did not come into the State until after the fraud was complete. *Ib.*

<i>See</i> DEBTOR AND CREDITOR;	PHILIPPINE ISLANDS, 1, 2, 3, 5;
EXTRADITION;	WITNESSES, 1, 2.

## CUBA.

See CUSTOMS LAW, 1-6.

## CUSTOMS LAW.

1. *Rates under § 2 of treaty with Cuba of 1903; quære as to.*

*Quære* and purposely not decided whether the reduction in tariff rates provided by § 2 of the treaty with Cuba of 1903 is limited to rates of duty in general tariff acts and does not apply to special rates under special agreements with other countries. (*Whitney v. Robertson*, 124 U. S. 190.) *Faber v. United States*, 649.

2. *Rates on imports from Cuba; construction of treaty of 1903.*

The treaty with Cuba of 1903 was signed and proclaimed after the decisions of this court in the *Insular Cases* to the effect that Porto Rico and the Philippine Islands were not foreign countries; and within the meaning of that treaty the Philippines are not a foreign country or another country, and the reduction of tariff on articles imported from Cuba is not to be based on tariff rates on the same articles brought from the Philippine Islands. *Ib.*

3. *"Country" as used in revenue laws; status of Philippines within meaning of treaty with Cuba.*

In the absence of some qualifying phrase the word "country" in the revenue laws of the United States embraces all provinces of a state no matter how widely separated and the Philippines are a part of the United States within the meaning of the treaty with Cuba of 1903. *Ib.*

4. *Duties on imports from Philippine Islands; disposition of; character as duties on imports from foreign countries.*

The duties imposed and collected on articles coming into the United States from the Philippine Islands are not covered into the treasury of the United States but are used and expended solely for the use and government of those Islands and are not to be regarded as duties on imports from foreign countries within the meaning of the treaty with Cuba of 1903. *Ib.*

5. *Preferential rates granted to Cuba by treaty of 1903 relate to what.*

The word "imports" is the correlative of the word "exports" and preferential rates granted to Cuba under the treaty of 1903 relate only to duties on imports from countries foreign to the United States. *Ib.*

6. *Preferential rates granted to Cuba; construction of Art. VIII of treaty of 1903.*

The provisions of Art. VIII of the treaty with Cuba of 1903 will not

be construed so as to give that country advantages over shipments coming into the United States from a part of its own territory. *Ib.*

### DEBATES.

*See* STATUTES, A 2.

### DEBTOR AND CREDITOR.

*Preferences with knowledge of insolvency; when not illegal.*

Knowledge of one's own insolvency, except in cases provided by statute, does not render it illegal or criminal to prefer one creditor above another. (*Huntley v. Kingman*, 152 U. S. 527.) *Merillat v. Hensey*, 333.

*See* TAXES AND TAXATION, 1-5.

### DEFENSES.

*See* WRIT AND PROCESS, 3.

### DELEGATION OF POWER.

*See* NAVIGABLE WATERS, 2.

### DEPARTMENTAL CONSTRUCTION.

*See* STATUTES, A 2.

### DESERT LANDS.

*See* PUBLIC LANDS, 1, 2.

### DISCOVERY.

*See* EQUITY;

EVIDENCE, 1, 2.

### DISTRICT OF COLUMBIA.

*See* APPEAL AND ERROR, 1;      TAXES AND TAXATION, 11;  
ASSIGNMENTS, 4;      TESTAMENTARY LAW.

### DOCUMENTS.

*See* BANKRUPTCY;

CONSTITUTIONAL LAW, 20-26, 28;

CORPORATIONS, 2-5, 7-9.

### DUE FAITH AND CREDIT.

*See* CONSTITUTIONAL LAW, 18.

DUE PROCESS OF LAW.

*See* CONSTITUTIONAL LAW, 11, INDIANS, 9;  
 12, 13; INTERSTATE COMMERCE, 7;  
 CRIMINAL LAW, 3; PHILIPPINE ISLANDS, 1;  
 TAXES AND TAXATION, 2, 3, 4, 7, 9.

DUTIES ON IMPORTS.

*See* CUSTOMS LAW.

ELEVENTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 32-37.

EMINENT DOMAIN.

*See* CONSTITUTIONAL LAW, 12.

EMPLOYÉS' HOURS OF LABOR.

*See* CONGRESS, POWERS OF, 1.  
 CONSTITUTIONAL LAW, 1, 10, 38.

ENABLING ACTS.

*See* STATES, 2, 3.

ENGLAND.

*See* EVIDENCE, 3;  
 RESTRAINT OF TRADE, 1-6.

EQUALITY OF STATES.

*See* STATES, 3.

EQUAL PROTECTION OF THE LAW.

*See* CONSTITUTIONAL LAW, 13-16.

EQUITY.

*Jurisdiction of bill for discovery; effect of enlargement of powers of courts of law.*

A court of equity does not lose its jurisdiction to entertain a bill for the discovery of evidence or to enjoin the trial at law until obtained, because the powers of the courts of law have been enlarged so as to make the equitable remedy unnecessary in some circumstances. *Carpenter v. Winn*, 533.

*See* INJUNCTION.

## ESTOPPEL.

See TAXES AND TAXATION, 8.

## EVIDENCE.

1. *Production of, in court of law; construction of § 724, Rev. Stat.*

Section 724, Rev. Stat., has never been construed by this court, and the decisions of the inferior courts have not had such uniformity as to exert any controlling influence. *Carpenter v. Winn*, 533.

2. *Production of, in court of law; meaning of word "trial" as used in § 724, Rev. Stat.*

The word "trial" as used in § 724, Rev. Stat., refers to the final examination and decision of matter of law as well as facts, for which every antecedent step is a preparation. *Ib.*

3. *Decision of House of Lords of England as.*

A decision of the House of Lords, although announced after an event, may serve reflexly to show the state of the law in England at the time of such event. *Standard Oil Co. v. United States*, 1.

See ASSIGNMENTS, 3;	PHILIPPINE ISLANDS, 7;
CONSTITUTIONAL LAW,	RESTRAINT OF TRADE, 29;
19-28;	WITNESSES;
EQUITY;	WRIT AND PROCESS.

## EXCEPTIONS.

See FEDERAL QUESTION, 2.

STATUTES, A 4.

## EXECUTIVE DEPARTMENTS.

See EXECUTIVE OFFICERS.

## EXECUTIVE OFFICERS.

*Act of subordinate as act of head of department.*

The head of an executive department of this Government cannot himself sign every official communication emanating from his department, and a proper notice signed by the Assistant Secretary has the same force as though signed by the Secretary. *Hannibal Bridge Co. v. United States*, 194.

See NAVIGABLE WATERS, 2.

## EXTRADITION.

1. *Sufficiency of indictment.*

In a *habeas corpus* proceeding in extradition it is sufficient if the count



in the indictment plainly shows that the defendant is charged with a crime. (*Pierce v. Creecy*, 210 U. S. 387.) *Strassheim v. Daily*, 280.

2. *Fugitive from justice; what constitutes.*

One who is never within the State before the commission of a crime producing its results within its jurisdiction is not a fugitive from justice within the rendition provisions of the Constitution, *Hyatt v. Corkran*, 188 U. S. 691, but, if he commits some overt and material act within the State and then absents himself, he becomes a fugitive from justice when the crime is complete if not before. *Ib.*

3. *Fugitive from justice; when one absent from State when crime committed became such.*

Although absent from the State when the crime was completed in this case, the party charged became a fugitive from justice by reason of his having committed certain material steps towards the crime within the State, and the demanding State is entitled to his surrender under Art. IV, § 2 of the Constitution of the United States and the statutes providing for the surrender of fugitives from justice. *Ib.*

4. *International; effect of untechnical request for.*

While a person is not to be sent from this country on mere demand or surmise, this Government should respond to a request for extradition if there is reasonable ground to suppose the accused to be guilty of an extraditable crime, even if presented in untechnical form; good faith demands this much in carrying out an extradition treaty. *Glucksman v. Henkel*, 508.

5. *International; assumption as to fair trial in demanding country.*

Courts are bound by the existence of an extradition treaty to assume that the trial in the demanding State will be fair. *Ib.*

6. *International; presumption as to certificate of magistrate of demanding country.*

Where a magistrate of a demanding State certifies of his own knowledge to the identity of photographs, the courts of this country will presume in extradition proceedings that he had reason for so doing. *Ib.*

7. *International; sufficiency of presentation.*

In this case held that although the presentation was untechnical it was sufficient to justify surrender. *Ib.*

8. *International; effect of variance between complaint and evidence where crime plainly charged.*

Where the complaint calls the instruments alleged to have been forged bills of exchange and the evidence showed they were promissory notes the variance will not defeat surrender where the instruments are identified and there is a plain charge of forgery. *Ib.*

9. *International; variance between complaint and proof; law governing materiality.*

If an extraditable crime under the law of the state where the accused is found is sufficiently charged, the effect of variance between complaint and proof is a matter to be decided on general principles irrespective of the law of that state. *Wright v. Henkel*, 190 U. S. 40; *Petit v. Walshe*, 194 U. S. 205, distinguished. *Ib.*

10. *International; sufficiency of complaint.*

Even though the complaint be sworn to on information and belief, if it is supported by testimony of witnesses stated to have deposed, the court will presume that they were sworn and the complaint is sufficient. (*Rice v. Ames*, 180 U. S. 371.) *Ib.*

#### FACTS.

*Question of fact; excessiveness of assessment as.*

Whether a special assessment for benefits of a street opening is excessive is a question of fact. (*English v. Arizona*, 214 U. S. 359.) *Briscoe v. District of Columbia*, 547.

#### FEDERAL QUESTION.

1. *When action of Supreme Court of Philippine Islands to supply omissions in record, not reviewable.*

Under § 5 of the act of July 1, 1902, c. 1369, 32 Stat. 691, unless action taken by the Supreme Court of the Philippine Islands to supply omissions in the record violates the Constitution or a statute of the United States, this court cannot disturb the judgment. *Dowdell v. United States*, 325.

2. *Effect of exception in state court that judgment deprives of property without due process of law.*

An exception in the state court that the judgment deprives plaintiff in error of his property without due process of law in violation of the Constitution of the United States only affords ground for an inquiry whether the proceedings themselves show a want of due process. *Appleby v. Buffalo*, 524.

*See* CONSTITUTIONAL LAW, 18;

JURISDICTION, A 2;

TAXES AND TAXATION, 9.

FIFTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 19.

FOREIGN CORPORATIONS.

*See* INTERSTATE COMMERCE, 7;  
RESTRAINT OF TRADE, 16.

FOREIGN COUNTRY.

*See* CUSTOMS LAW, 2-5.

FOREIGN LAW.

*See* TRADE-MARKS, 2.

FOREIGN STATUTES.

*See* STATUTES, A 5, 6.

FOURTEENTH AMENDMENT

*See* CONSTITUTIONAL LAW.

FOURTH AMENDMENT.

*See* CONSTITUTIONAL LAW, 24, 25, 38.

FRAUD.

*What constitutes; furnishing old articles under guaranty of fitness.*

Where a guaranty goes not to newness but to fitness of articles furnished, it is a material fraud to furnish old articles even if they can meet the test of the guaranty; and the fact that the purchaser may rely on the guaranty does not exclude the possibility that the purchase price was obtained by false representations as to the newness of the articles. *Strassheim v. Daily*, 280.

*See* ASSIGNMENTS; PRACTICE AND PROCEDURE, 2;  
CRIMINAL LAW, 5; UNFAIR TRADE, 4.

FRAUDULENT CONVEYANCES.

*See* ASSIGNMENTS.

FREEDOM OF SPEECH.

*See* CONSTITUTIONAL LAW, 17.

FUGITIVE FROM JUSTICE.

*See* EXTRADITION, 2, 3.

## FULL FAITH AND CREDIT.

*See* CONSTITUTIONAL LAW, 18.

## GEOGRAPHICAL NAMES.

*See* TRADE-MARKS, 1, 4.

## GRAND JURY.

*See* CORPORATIONS, 7;  
WITNESSES, 2.

## GUARANTY.

*See* FRAUD.

## GUARDIANSHIP.

*See* INDIANS, 2.

## HABEAS CORPUS.

*See* EXTRADITION, 1.

## HOMESTEADS.

*See* PUBLIC LANDS, 5-9.

## HOURS OF LABOR.

*See* CONGRESS, POWERS OF, 1;  
CONSTITUTIONAL LAW, 1, 10, 38.

## IMMUNITY FROM SUIT.

*See* CONSTITUTIONAL LAW, 32-37.

## IMMUNITY OF WITNESSES.

*See* WITNESSES, 1.

## IMPAIRMENT OF CONTRACT OBLIGATION.

*See* CONSTITUTIONAL LAW, 2-10.

## IMPORTS.

*See* CUSTOMS LAW.

## INDIANS.

1. *Policy of Congress in legislation respecting.*

From the earliest period Congress has dealt with Indians as dependent people and legislated concerning their property with a view to their protection as such. *Tiger v. Western Investment Co.*, 286.

2. *Guardianship; cessation of; determination by Congress and not by courts.*

It is for Congress, in pursuance of long established policy of this Government, and not for the courts, to determine for itself when, in the interest of the Indian, government guardianship over him shall cease. *Ib.*

3. *Intoxicating liquors; effect of allotment in severalty of tribal lands on power of Congress to prohibit.*

When, under the act of August 7, 1882, c. 434, 22 Stat. 341, an allotment in severalty has been made to a tribal Indian out of lands in a tribal reservation in the State of Nebraska, and a trust patent therefor has been issued to the allottee, and when the provisions of § 7 of that act and of § 7 of the act of February 8, 1887, c. 119, 24 Stat. 388, have been effective as to such allottee, the fact that the United States holds the lands so allotted in trust for the allottee, or, in case of his decease for his heirs as provided in § 6 of the said act of 1882, enables, authorizes and permits the United States to regulate and prohibit the introduction of intoxicating liquors upon such allotment during the limited period for which the land so allotted is so held in trust by the United States. *Hallowell v. United States*, 317.

4. *Intoxicating liquors; effect of citizenship of Indians on duty of United States to prohibit.*

The mere fact that citizenship has been conferred on allottee Indians does not necessarily end the right or duty of the United States to pass laws in their interest as a dependent people; and so held that the prohibitions of the act of January 30, 1897, c. 109, 29 Stat. 506, against introduction of liquor into Indian country, are within the power of Congress. *Ib.*

5. *Lands; essentials to validity of conveyances of, under act of April 26, 1906.*

The act of April 26, 1906, c. 1876, 34 Stat. 137, providing for the final disposition of the affairs of the Five Civilized Tribes in Indian Territory, while it permitted lands to be conveyed by full-blood Indians, was nevertheless intended to prevent imprudent sales by this class of Indians and made such conveyances valid only when affirmed by the Secretary of the Interior. *Tiger v. Western Investment Co.*, 286.

6. *Land; testamentary disposition of; conveyances; purpose of § 8 of act of May 27, 1908.*

The obvious purpose of § 8 of the act of May 27, 1908, c. 199, 35 Stat.

312, was to continue supervision over the right of full-blood Indians to dispose of lands by will, and to require conveyances of interests of full-blood Indians in inherited lands to be approved by a competent court. *Ib.*

7. *Property of; alienation; power of Congress to restrict; effect of citizenship of Indians. Act of April 26, 1906, and supplemental Creek agreement of June 30, 1902.*

When the act of April 26, 1906, was passed, Congress had not by the supplemental Creek agreement of June 30, 1902, c. 1323, 32 Stat. 500, or by any other act, released its control over the alienation of lands of full-blood Creek Indians, and it was within its power to continue to restrict such alienation, notwithstanding the bestowal of citizenship upon the Indians, by requiring the approval of the Secretary of the Interior to conveyances made by them. *Ib.*

8. *Property; effect of Oklahoma Enabling Act to preserve authority of Federal Government.*

In passing the enabling act for the admission of Oklahoma of June 16, 1906, c. 3335, 34 Stat. 267, Congress preserved the authority of the Government of the United States over the Indians, their lands and property, which it had prior to the passage of that act. *Ib.*

9. *Property rights; constitutionality of act of April 26, 1906, restricting right of alienation.*

As above construed, the act of April 26, 1906, c. 1876, 34 Stat. 137, is not unconstitutional as depriving full-blood Indians upon whom citizenship has been bestowed of their property without due process of law because it places further restrictions upon their right of alienation of lands. *Ib.*

10. *Tribal lands; power of United States to regulate.*

The power of the United States to make rules and regulations respecting tribal lands, the title to which it has not parted with, although allotted, is ample. (*Tiger v. Western Investment Co.*, ante, p. 286.) *Hallowell v. United States*, 317.

11. *Tribal property; power of Congress over; effect of citizenship of individual Indian.*

Congress has full power to legislate concerning tribal property of Indians, and the conferring of citizenship on individual Indians does not prevent Congress from continuing to deal with tribal lands. *Tiger v. Western Investment Co.*, 286.

See PRACTICE AND PROCEDURE, 5.  
STATES, 2.

INDICTMENT AND INFORMATION.

*See* EXTRADITION, 1;  
PHILIPPINE ISLANDS, 1.

INFRINGEMENT OF COPYRIGHT.

*See* COPYRIGHTS.

INJUNCTION.

1. *Violation of injunction against boycott; what may constitute.*

Where conditions exist that justify the enjoining of a boycott, the publication and use of letters, circulars and printed matter, may constitute the means of unlawfully continuing the boycott and amount to a violation of the order of injunction. *Gompers v. Bucks Stove & Range Co.*, 418.

2. *Boycott that may be enjoined.*

*Quere* as to what constitutes a boycott that may be enjoined by a court of equity; but, in order that it may be enjoined, it must appear that there is a conspiracy causing irreparable damage to complainant's business or property. *Ib.*

3. *Against publication of words used as signal.*

An agreement to act in concert on publication of a signal makes the words used as the signal amount to verbal acts, and, when the facts justify it, the court having jurisdiction can enjoin the use of the words in such connection; and so held as to words "unfair" and "we don't patronize" as used in this case for the purpose of continuing a boycott. *Ib.*

4. *Violation; effect on proceeding for, of settlement of main suit in which writ granted.*

Where the main suit in which an injunction order has been granted is settled and discontinued, every proceeding which is a part thereof, or dependent thereon, is also necessarily settled as between the parties; and so held as to a proceeding instituted by the party aggrieved against the other party for violation of an injunction. *Ib.*

<i>See</i> ACTIONS;	CONTEMPT OF COURT, 2, 4;
CONSTITUTIONAL LAW,	EQUITY;
17, 34;	JUDGMENTS AND DECREES, 2;
RESTRAINT OF TRADE,	37, 38.

INSOLVENCY.

*See* DEBTOR AND CREDITOR.

## INSURANCE PREMIUMS.

See TAXES AND TAXATION, 4, 5.

## INTERNATIONAL EXTRADITION.

See EXTRADITION, 4-10.

•  
INTERSTATE COMMERCE.

1. *Commerce clause; purpose and effect to promote welfare of United States and States.*

The welfare of the United States is constituted of the welfare of all the States, and that of the States is made greater by mutual division of their resources. This is the purpose and result of the commerce clause of the Constitution. *Oklahoma v. Kansas Natural Gas Co.*, 229.

2. *State lines obliterated; power transcending that of State.*

In matters of foreign and interstate commerce there are no state lines; in such commerce instead of the States a new power and a new welfare appears that transcend the power and welfare of any State. *Ib.*

3. *Right to engage in; power of State over.*

The right to engage in interstate commerce is not the gift of a State; nor can a State regulate or restrain such commerce, or exclude from its limits a corporation engaged therein. *Ib.*

4. *Subjects of; natural gas and oil as.*

Natural gas and oil when reduced to possession by the owner of the land are commodities belonging to him subject to his right of sale thereof and are subjects of both intrastate and interstate commerce. *Ib.*

5. *State may not prohibit interstate commerce in article produced within its borders.*

When a State recognizes an article to be a subject of interstate commerce it cannot prohibit that article from being the subject of interstate commerce; and so held that corporations engaged in interstate commerce cannot be excluded from transporting from a State oil and gas produced therein and actually reduced to possession. *Ib.*

6. *State interference; effect of inaction by Congress.*

Inaction by Congress in regard to a subject of interstate commerce is a declaration of freedom from state interference. *Ib.*



7. *State interference; validity of Oklahoma statute prohibiting transportation of natural gas to points without State.*

Where a State grants the use of its highways to domestic corporations engaged in intrastate commerce in a commodity it cannot deny the same use, under the same restrictions, to foreign corporations engaged in interstate commerce in the same commodity; and so *held* that the statute of Oklahoma prohibiting foreign corporations from building pipe lines across highways and transporting natural gas therein to points outside the State is unconstitutional as an interference with, and restraint upon, interstate commerce, and as a deprivation of property without due process of law. *Ib.*

*See* CONGRESS, POWERS OF, 1, 2;  
CONSTITUTIONAL LAW, 1;  
STATES, 2, 4.

#### INTERSTATE COMMERCE COMMISSION.

*See* CONSTITUTIONAL LAW, 38.

#### INTERSTATE RENDITION.

*See* EXTRADITION, 1, 2, 3.

#### INTOXICATING LIQUORS.

*See* INDIANS, 3, 4.

#### JUDGMENTS AND DECREES.

1. *Collateral impeachment of judgment rendered by court exercising statutory jurisdiction.*

Where, as in this case, the court is possessed of statutory jurisdiction and all the essential facts appear to have existed, the judgment is no more subject to collateral impeachment than one entered in exercise of general jurisdiction. *Briscoe v. District of Columbia*, 547.

2. *Collateral attack of judgment of assessment precluded.*

Although the court could have, on motion of the dissatisfied owner, set the assessment in a special proceeding aside, and ordered a new trial, if the owner failed to take the proceedings provided by the statute, and the court had jurisdiction of the parties and subject-matter, the judgment cannot be attacked collaterally in a suit to enjoin sale under the judgment of assessment. *Ib.*

#### JUDICIAL NOTICE.

*Of traffic conditions.*

This court may take judicial notice of the density of traffic on a well known thoroughfare. *Fifth Avenue Coach Co. v. New York*, 467.

## JURISDICTION.

## A. OF THIS COURT.

1. *To review judgment of highest court of State; limitations of § 709, Rev. Stat.*

The right of this court to review the judgment of the highest court of a State is specifically limited by § 709, Rev. Stat., and, in cases such as this, depends on an alleged denial of a Federal right which the record shows was specially set up and claimed in, and denied by, the state court or that such was the necessary effect of the judgment. *Appleby v. Buffalo*, 524.

2. *Under § 709, Rev. Stat.; sufficiency of Federal question for.*

Whether the State can require payment of accounts in savings banks without production of the pass-book and the rights and relations of parties arising out of the charter and contract of deposit are to be determined by local law and do not present Federal questions giving this court jurisdiction under § 709, Rev. Stat. *Provident Savings Institution v. Malone*, 660.

3. *Assignments of error cannot originate right of review.*

Assignments of error made for the purpose of bringing the case to this court cannot originate the right of review here. *Appleby v. Buffalo*, 524.

## B. OF CIRCUIT COURTS.

*Under § 4 of Anti-trust Act of 1890.*

Where one of the defendants in a suit, brought by the Government in a Circuit Court of the United States under the authority of § 4 of the Anti-trust Act of July 2, 1890, is within the district, the court, under the authority of § 5 of that act, can take jurisdiction and order notice to be served upon the non-resident defendants. *Standard Oil Co. v. United States*, 1.

## C. EQUITY.

*See EQUITY.*

## D. GENERALLY.

<i>See</i> CONSTITUTIONAL LAW,	JUDGMENTS AND DECREES, 1, 2;
36, 37;	PLEADING, 1;
CRIMINAL LAW, 4, 5;	TAXES AND TAXATION, 2, 3;
TESTAMENTARY LAW.	

## JURY TRIAL.

*See PHILIPPINE ISLANDS, 2.*

## LABOR.

*See* CONGRESS, POWERS OF, 1;  
CONSTITUTIONAL LAW, 1, 10.

## LACHES.

*See* PUBLIC LANDS, 8.

## LAND DEPARTMENT.

*See* PUBLIC LANDS, 2.

## LAND ENTRIES.

*See* PUBLIC LANDS, 1, 2.

## LAND GRANTS.

*Interpretation by public officials; effect to be given.*

Where a practical interpretation has been given to a grant of land by the public officials authorized to interpret it, full effect should be given thereto. *Jover v. Insular Government*, 623.

*See* PHILIPPINE ISLANDS, 6, 7, 8;  
PUBLIC LANDS;  
SPAIN, 2.

## LAND WARRANTS.

*See* PUBLIC LANDS, 11, 12.

## LAW GOVERNING.

*See* CORPORATIONS, 5;  
JURISDICTION, A 2.

## LIBERTY OF CONTRACT.

*See* CONSTITUTIONAL LAW, 10;  
CONTRACTS;  
RESTRAINT OF TRADE, 25.

## LIQUORS.

*See* INDIANS, 3, 4.

## LOCAL LAW.

*District of Columbia.* Code, § 130, as amended by act of June 30, 1902 (see Testamentary Law). *Lewis v. Luckett*, 554.  
Code, § 1120 (see Assignments, 2). *Merillat v. Hensey*, 333.  
Act of Feb. 10, 1899, 30 Stat. 834, extending Rhode Island Avenue (see Constitutional Law, 11). *Briscoe v. District of Columbia*, 547.

*Louisiana.* Act of 1884, giving right of action for wrongful death (see Practice and Procedure, 3). *Texas & New Orleans R. R. Co. v. Miller*, 408.

*Massachusetts.* Savings Bank Act of 1907 (see Constitutional Law, 13). *Provident Savings Institution v. Malone*, 660.

*New York.* Advertising vehicles law (see Constitutional Law, 15), *Fifth Avenue Coach Co. v. New York*, 467.

*Philippine Islands.* Bill of Rights (see Philippine Islands, 1, 3). *Dowdell v. United States*, 325. Spanish law (see Philippine Islands, 6). *Jover v. Insular Government*, 623.

*Spain.* Constitution as existing in 1859, Art. 46 (see Spain, 1). *Jover v. Insular Government*, 623. Laws of Partida relative to common right to sea and its shores (see Spain, 2). *Ib.*

*Generally.* See States.

#### MAXIMS.

*Corruptio optimi pessima.* Sound general principles should not be turned to support a conclusion manifestly improper. *Jacobs v. Beecham*, 263.

*Mobilia sequuntur personam.* See TAXES AND TAXATION, 2.

#### MISBRANDING.

See PURE FOOD AND DRUG ACT.

#### MONOPOLIZATION.

See RESTRAINT OF TRADE.

#### NATIONAL BANKS.

*Shareholders; liability under § 5151, Rev. Stat.; withdrawals.*

Shareholders who have complied, so far as steps required to be done on their part is concerned, with the provisions of the act of July 12, 1882, 22 Stat. 162, c. 290, in regard to withdrawing from a national banking association, two-thirds of the shareholders whereof have asked for a renewal of the charter, cease to be members of the association, even if, through no fault of their own, the final action is not taken; and such shareholders are not liable

for assessments subsequently made by the Comptroller of the Currency under § 5151, Rev. Stat. *Apsey v. Kimball*, 514.

#### NATURAL GAS AND OIL.

See INTERSTATE COMMERCE, 4, 5, 7.  
STATES, 4, 5.

#### NAVIGABLE WATERS.

1. *Bridges over; removal of; validity of act of Congress of March 3, 1899, § 18.*

Section 18 of the act of March 3, 1899, c. 425, 30 Stat. 1153, authorizing the Secretary of War to require the removal of bridges which are obstructions to navigation over navigable waterways of the United States, is within the constitutional powers of Congress, and was enacted to carry out the declared policy of the Government as to the free and unobstructed navigation of waters of the United States over which Congress has paramount control in virtue of its power to regulate commerce. *Hannibal Bridge Co. v. United States*, 194.

2. *Bridges over; removal of; effect of act of 1899 as unconstitutional delegation of power to executive officer.*

As the statute only imposes on the Secretary of War the duty of attending to details necessary to carry out such declared policy it is not an unconstitutional delegation of legislative or judicial power to an executive officer. *Ib.*

3. *Bridges; removal of; right of owners to complain of action of Secretary of War.*

Notice was duly served on all parties in interest and the hearings given on the report of the Chief of Engineers by the Secretary of War were in accord with the statute and the owners of the bridge, the removal whereof was ordered, cannot complain. *Ib.*

4. *Bridges; removal of; effect of act authorizing erection on right of Congress to exercise reserved powers.*

The fact that a bridge was erected over a navigable water of the United States under authority of the act of July 25, 1866, c. 246, 14 Stat. 244, does not prevent Congress from ordering its removal when it becomes an obstruction, as the act expressly reserves the right to alter or amend it so as to prevent obstructions to navigation. (*Union Bridge Co. v. United States*, 204 U. S. 364.) *Ib.*

5. *Bridges; alteration; sufficiency of notice therefor.*

The notice of alterations required was sufficient in this case as it left no reasonable doubt as to what was to be done. *Ib.*

6. *Bridges; requiring alteration not a taking of property.*

Requiring the alteration of a bridge which is an obstruction to navigation is not a taking of property of the owners of such bridge within the meaning of the Constitution. *Ib.*

NON-RESIDENT DEFENDANTS.

*See* JURISDICTION, B.

NON-USER.

*See* TRADE-MARKS, 3.

NORTHERN PACIFIC LAND GRANT.

*See* PUBLIC LANDS, 5-9.

NOTICE.

*See* DEBTOR AND CREDITOR      JUDICIAL NOTICE;  
EXECUTIVE OFFICERS;      JURISDICTION, B;  
NAVIGABLE WATERS, 3, 5.

OBJECTIONS.

*See* CRIMINAL LAW, 2.

OBSTRUCTIONS TO NAVIGATION.

*See* NAVIGABLE WATERS.

OKLAHOMA.

*See* INDIANS, 8;  
INTERSTATE COMMERCE, 7;  
STATES, 7.

ONUS PROBANDI.

*See* UNFAIR TRADE, 2, 3.

OPEN ACCOUNT.

*See* TAXES AND TAXATION, 1.

PARTIES.

*See* CONSTITUTIONAL LAW, 36, 37;  
PRACTICE AND PROCEDURE, 4, 5.

PATENTS.

*See* UNFAIR TRADE, 4.

## PENALTIES AND FORFEITURES.

1. *Judiciary limited to infliction of what.*

Penalties which are not authorized by the law cannot be inflicted by judicial authority. *Standard Oil Co. v. United States*, 1.

2. *Reason for distinction in penalties prescribed; duty of court as to.*

Where a distinction is plainly made in an act of Congress prescribing penalties as to different classes of the offense, the court need not search for the reason for making the distinction but must give it effect. *American Lithographic Co. v. Werckmeister*, 603.

See CONTEMPT OF COURT, CRIMINAL LAW, 4, 5;  
2, 3; NATIONAL BANKS;  
COPYRIGHTS; TRADE-MARKS, 3.

## PHILIPPINE ISLANDS.

1. *Criminal law; necessity for indictment.*

The Bill of Rights of the Philippine Islands does not require convictions to be based on indictment; nor does due process of law require presentment of an indictment. (*Hurtado v. California*, 110 U. S. 516.) *Dowdell v. United States*, 325.

2. *Trial by jury; right to.*

In the absence of legislation by Congress, there is no right in the Philippine Islands to require trial by jury in criminal cases. (*Dorr v. United States*, 195 U. S. 138.) *Ib.*

3. *Record on appeal; additional; effect of "face to face" provision of Bill of Rights.*

The "face to face" provision of the Philippine Bill of Rights does not prevent the judge and clerk of the trial court from certifying as additional record to the appellate court what transpired on the trial of one convicted of a crime without the accused being present when the order was made. *Ib.*

4. *Practice as to form of record on appeal not objectionable under Constitution.*

There is no valid objection based on the Constitution of the United States to the practice of the Supreme Court of the Philippine Islands adopted in this case for determining in what form it will accept the record of the court below. *Ib.*

5. *Witnesses in criminal prosecution; provision in § 5 of act of July 1, 1902, construed.*

The provision in § 5 of the Philippine act of July 1, 1902, c. 1369, 32 Stat. 691, that in all criminal prosecutions the accused shall meet

the witnesses face to face is substantially the provision of the Sixth Amendment; is intended thereby that the charge shall be proved only by such witnesses as meet the accused at the trial face to face and give him an opportunity for cross-examination. It prevents conviction by *ex parte* affidavits. *Ib.*

6. *Land grants; status of Governor General under Spanish rule.*

The Governor General of the Philippine Islands under Spanish rule possessed all the powers of the King except where otherwise provided, and a grant of lands made by him was valid unless in violation of law specially prohibiting him from making it. *Jover v. Insular Government*, 623.

7. *Land grants; exaction of taxes as evidence of validity.*

Where the local authorities in the Philippine Islands, with full knowledge of the circumstances under which a grant was made, imposed taxes on the property for many, in this case thirty-nine, years, it is persuasive proof that the grant was valid and that the Governor General did not exceed his authority in making it. *Ib.*

8. *Land grants; tide lands; effect to defeat, of failure to reclaim.*

A grant of tide lands, although made upon condition of reclamation, is not defeated by failure to reclaim if the granting words import a present and immediate transfer of ownership; and so held as to a grant of such lands in the Philippine Islands where the grantee was "granted possession and ownership," and there was no express condition either precedent or subsequent that the land be reclaimed within any definite period. *Ib.*

See APPEAL AND ERROR, 2; FEDERAL QUESTION, 1;

CUSTOMS LAW, 2, 3, 4; SPAIN, 2.

### PLEADING.

1. *Amendment by striking out untenable prayer.*

Where a suit is for damages caused by erection of a dyke and for removal of the dyke the prayer for removal can be stricken out without depriving the court of jurisdiction to hear and determine the prayer for damages. *Hopkins v. Clemson College*, 636.

2. *Cure of omission in complaint.*

An omission in the complaint can be cured by an allegation in the answer. (*United States v. Morris*, 10 Wheat. 246.) *Texas & New Orleans R. R. Co. v. Miller*, 408; *Texas & New Orleans R. R. Co. v. Gross*, 417.

See CONSTITUTIONAL LAW, 18;

CRIMINAL LAW, 2;

EXTRADITION, 10.



PLEADING AND PROOF.

*See* EXTRADITION, 8, 9.

POLICE POWER.

*See* CONSTITUTIONAL LAW, 5;  
STATES, 4.

PRACTICE AND PROCEDURE.

1. *Noticing plain error not assigned.*

This court, under Rule 21, can and in this case, as the appeal was taken before the decision in *Realty Co. v. Rudolph*, will, notice a plain error of fact even if unassigned. *Briscoe v. District of Columbia*, 547.

2. *Question of actual fraud precluded by findings of lower courts.*

Both courts below having found that no actual fraud was intended in this case, this court considered only the question of constructive fraud. *Merillat v. Hensey*, 333.

3. *Review of decision of state court construing foreign statute.*

This court will not disturb the decision of the courts of Texas that the act of Louisiana of 1884, giving a right of action to relatives of persons killed by negligence of another, repealed the provisions in the charter of a railroad company granted in 1878 exempting it from liability for a person killed by its negligence; and the act of 1884 is not unconstitutional as impairing any contract obligation in such charter. *Texas & New Orleans R. R. Co. v. Miller*, 408; *Texas & New Orleans R. R. Co. v. Gross*, 417.

4. *Who may raise question as to constitutionality of state statute.*

The question of whether a statute allows a depositor or his heirs a lower rate of interest on a deposit turned over to the State as abandoned than allowed by the bank amounts to a deprivation of property without due process of law within the Fourteenth Amendment cannot be raised by the bank as against the State. *Provident Savings Institution v. Malone*, 660.

5. *Who may attack constitutionality of act of Congress; quære as to.*

*Quære* whether the constitutionality of an act of Congress limiting a right of conveyance by a class of Indians can be questioned by the grantee of an Indian of that class on the ground that it deprives the Indian of his property without due process of law. *Tiger v. Western Investment Co.*, 286.

6. *Mandate on modification of decree below; when reversal proper course.*

Where a case is remanded, as this one is, to the lower court with directions to grant the relief in a different manner from that decreed by it, the proper course is not to modify and affirm, but to reverse and remand with directions to enter a decree in conformity with the opinion and to carry out the directions of this court with costs to defendants. *United States v. American Tobacco Co.*, 106.

*See* CONTEMPT OF COURT, 1, 3;  
PHILIPPINE ISLANDS, 4;  
TESTAMENTARY LAW.

PRAYERS.

*See* PLEADING, 1.

PREFERENCES.

*See* CUSTOMS LAW;  
DEBTOR AND CREDITOR.

PRESUMPTIONS.

*See* EXTRADITION, 5, 6, 10;                      RIPARIAN RIGHTS, 1, 2;  
RESTRAINT OF TRADE, 24;                      STATES, 1;  
UNFAIR TRADE, 3.

PRINCIPAL AND AGENT.

*See* ACTIONS.

PROBATE LAW.

*See* TESTAMENTARY LAW.

PRODUCTION OF BOOKS AND PAPERS.

*See* BANKRUPTCY;                      CORPORATIONS, 2, 4, 5, 7,  
CONSTITUTIONAL LAW,                      8, 9;  
20-26, 28;                      WRIT AND PROCESS.

PROPERTY.

*See* TAXES AND TAXATION, 1.

PROPERTY RIGHTS.

*Individual rights not enlarged by others refraining from exercise to harm of public.*

The rights of one to do that which if done by all would work public

harm and injury are not greater because others refrain from exercising such rights. *Fifth Avenue Coach Co. v. New York*, 467.

See CORPORATIONS, 1; INDIANS;  
COURTS; INTERSTATE COMMERCE, 7;  
NAVIGABLE WATERS, 6.

## PROPRIETARY MEDICINES.

See UNFAIR TRADE, 4;

## PUBLICATION.

See TESTAMENTARY LAW.

## PUBLIC CORPORATIONS.

See CONSTITUTIONAL LAW, 35, 36.

## PUBLIC IMPROVEMENTS.

See FACTS;  
TAXES AND TAXATION, 11.

## PUBLIC LANDS.

### 1. *Desert lands; assignability of entries.*

Under the Desert Land Act of March 3, 1877, c. 107, 19 Stat. 377, as added to by the act of March 3, 1891, c. 561, 26 Stat. 1096, a desert land entry is assignable. *United States v. Hammers*, 220.

### 2. *Desert land entries; assignability; practice of Land Department considered in determining.*

There is confusion between the original desert land act of 1877 and the act as amended in 1891 as to whether entries can be assigned, and the court turns for help to the practice of the Land Department in construing the act, and that has uniformly been since 1891 that entries were assignable. *Ib.*

### 3. *Grants to States; grant to Utah construed as to saline lands included.*

The words "110,000 acres of land . . . and including all the saline lands in the State" as used in § 8 of the Utah Enabling Act are not to be construed as a grant of such salines in addition to the 110,000 acres, but simply as conferring on the State the right, which it would not otherwise have, of including saline lands within its selections for the 110,000 acres. *Montello Salt Co. v. Utah*, 452.

### 4. *Grants of saline lands to States.*

This construction is in harmony with the uniform policy of Congress in connection with grants to the States of saline lands. *Ib.*

5. *Northern Pacific Land Grant Act of 1864; lands passing by; priority of right of homesteader.*

Land within place limits of the Northern Pacific Land Grant Act of July 2, 1864, c. 217, 13 Stat. 365, actually occupied by a homesteader intending to acquire title, did not pass by the grant but were excepted from its operation, and no right of the railroad attached to such lands when its line was definitely located. (*Nelson v. Northern Pacific Railway*, 188 U. S. 108.) *Northern Pacific Ry. Co. v. Trodick*, 208.

6. *Northern Pacific Land Grant; lands exempted from; right of vendee of prior homestead settler.*

Where a *bona fide* settler was in actual occupation of unsurveyed lands at the time of definite location of the line, the land occupied was excepted from the grant; and if, before survey, he sold his improvements to one who also settled on the land intending to apply for title under the homestead laws of the United States, the claim of the latter is superior to that of the railroad company notwithstanding the original settler had no claim of record. *Ib.*

7. *Northern Pacific Land Grant; right of settler in actual occupation before location of definite line of railroad.*

A settler in actual occupation before the location of the definite line of the railroad can stand upon his occupancy until the lands are surveyed, and his claim cannot be defeated by the railroad assuming without right at a date prior to his application to assert a claim to the lands. *Ib.*

8. *Northern Pacific Land Grant; effect, under act of May 14, 1880, of delay on part of homesteader in making application after survey.*

Under the act of May 14, 1880, c. 89, 21 Stat. 140, delay on the part of a homesteader in making application after survey cannot be taken advantage of by one who had acquired no rights prior to the filing; and so *held*, that where the Northern Pacific land grant had not attached on account of actual occupation, delay on the part of the settler in filing after survey did not inure to the benefit of the company. *Ib.*

9. *Northern Pacific Land Grant; rights of homesteader; effect of prior decisions.*

*Nelson v. Northern Pacific Railway Co.*, 188 U. S. 108, was not modified by *United States v. Chicago, Milwaukee & St. Paul Railway*, 218 U. S. 233, as to the rights of *bona fide* settlers which attached prior to definite location. *Ib.*

10. *Taxation by State.*

A State is without power to tax public lands which have been located under warrant until the equitable title has passed from the United States. *Sargent v. Herrick*, 404.

11. *Warrants; location; effect to pass title.*

The mere location of a land warrant does not operate as a payment of the purchase price and does not operate to pass the equitable title from the United States. *Ib.*

12. *Warrants; location; effect to pass title. Right of State to tax.*

Although if the locator had been the lawful owner of the warrant location would have entitled him to patent, if the Land Office found him not to be the lawful owner, location does not operate to pass the title until he substitutes and pays the Government price, and meanwhile the United States has such an interest in the land as renders its taxation by the State invalid. *Ib.*

13. *When held in trust by patentee; power of courts to declare trust.*

Where, by error of law, the Land Office incorrectly holds a party is entitled to patent and issues it, the courts can declare that the patent is held by the patentee in trust for the party actually entitled to have his ownership in the lands recognized. *Northern Pacific Ry. Co. v. Trodick*, 208.

See SPAIN, 1;  
STATES, 2.

## PUBLIC OFFICERS.

See EXECUTIVE OFFICERS;  
LAND GRANTS;  
PHILIPPINE ISLANDS, 6.

## PUBLIC POLICY.

See RESTRAINT OF TRADE, 5, 7.

## PURE FOOD AND DRUG ACT.

*Misbranding; provisions of § 8 of act of June 30, 1906, not applicable to statements as to curative effect of article.*

The term "misbranded" and the phrase defining what amounts to misbranding in § 8 of the Food and Drugs Act of June 30, 1906, 34 Stat. 768, c. 3915, are aimed at false statements as to identity of the article, possibly including strength, quality and purity, dealt with in § 7 of the act, and not at statements as to curative

effect; and so *held* that a statement on the labels of bottles of medicine that the contents are effective as a cure for cancer, even if misleading, are not covered by the statute. *United States v. Johnson*, 488.

#### RAILROADS.

*See* CONSTITUTIONAL LAW, 1, 4, 9;  
PUBLIC LANDS, 5-8.

#### RATES.

*See* CUSTOMS LAW, 1, 2, 5, 6.

#### REAL PROPERTY.

*See* INDIANS, 5-11.

#### RECEIVERS.

*See* BANKRUPTCY;  
CONSTITUTIONAL LAW, 20;  
RESTRAINT OF TRADE, 38.

#### RECORD ON APPEAL.

*See* FEDERAL QUESTION, 1;  
PHILIPPINE ISLANDS, 3, 4.

#### REMEDIES.

*See* RESTRAINT OF TRADE, 32-38  
TAXES AND TAXATION, 7, 8.

#### RESTRAINT OF TRADE.

##### 1. *Origin and meaning of terms used in Anti-trust Act of 1890.*

The terms "restraint of trade," and "attempts to monopolize," as used in the Anti-trust Act, took their origin in the common law and were familiar in the law of this country prior to and at the time of the adoption of the act, and their meaning should be sought from the conceptions of both English and American law prior to the passage of the act. *Standard Oil Co. v. United States*, 1.

##### 2. *Monopolies at common law; contracts within prohibitions.*

At common law monopolies were unlawful because of their restriction upon individual freedom of contract and their injury to the public and at common law; and contracts creating the same evils were brought within the prohibition as impeding the due course of, or being in restraint of, trade. *Ib.*

3. *Common law of United States against; doubt as to existence shown by debates on Anti-trust Act.*

The debates in Congress on the Anti-trust Act of 1890 show that one of the influences leading to the enactment of the statute was doubt as to whether there is a common law of the United States governing the making of contracts in restraint of trade and the creation and maintenance of monopolies in the absence of legislation. *Ib.*

4. *English rule as to freedom of contract.*

At the time of the passage of the Anti-trust Act the English rule was that the individual was free to contract and to abstain from contracting and to exercise every reasonable right in regard thereto, except only as he was restricted from voluntarily and unreasonably or for wrongful purposes restraining his right to carry on his trade. (*Mogul Steamship Co. v. McGregor*, 1892, A. C. 25.) *Ib.*

5. *Effect in this country of development of law of England as to.*

This country has followed the line of development of the law of England, and the public policy has been to prohibit, or treat as illegal, contracts, or acts entered into with intent to wrong the public and which unreasonably restrict competitive conditions, limit the right of individuals, restrain the free flow of commerce, or bring about public evils such as the enhancement of prices. *Ib.*

6. *Monopolies incompatible with English constitution.*

The early struggle in England against the power to create monopolies resulted in establishing that those institutions were incompatible with the English Constitution. *Ib.*

7. *Public policy manifested by Anti-trust Act.*

The public policy manifested by the Anti-trust Act is expressed in such general language that it embraces every conceivable act which can possibly come within the spirit of its prohibitions, and that policy cannot be frustrated by resort to disguise or subterfuge of any kind. *United States v. American Tobacco Co.*, 106.

8. *Intent of Congress in enacting Anti-trust Act of 1890; contracts contemplated.*

The Anti-trust Act of 1890 was enacted in the light of the then existing practical conception of the law against restraint of trade, and the intent of Congress was not to restrain the right to make and enforce contracts, whether resulting from combinations or otherwise, which do not unduly restrain interstate or foreign commerce, but to protect that commerce from contracts or combina-

tions by methods, whether old or new, which would constitute an interference with, or an undue restraint upon, it. *Standard Oil Co. v. United States*, 1.

9. *Intent of Congress in enacting Anti-trust Act of 1890; contracts and combinations contemplated.*

The words "restraint of trade" at common law, and in the law of this country at the time of the adoption of the Anti-trust Act, only embraced acts, contracts, agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or by unduly obstructing due course of trade, and Congress intended that those words as used in that act should have a like significance; and the ruling in *Standard Oil Co. v. United States*, ante, p. 1, to this effect is reexpressed and reaffirmed. *United States v. American Tobacco Co.*, 106.

10. *Duty of government to protect against unlawful organizations.*

On appeal against unlawfully exercising power of organizations it is the duty of government to protect the one against the many as well as the many against the one. *Gompers v. Bucks Stove & Range Co.*, 418.

11. *Acts prohibited; sufficiency of enumeration by Anti-trust Act.*

The Anti-trust Act generically enumerates the character of the acts prohibited and the wrongs which it intends to prevent and is susceptible of being enforced without any judicial exertion of legislative power. *Standard Oil Co. v. United States*, 1.

12. *Devices to which court's protective powers extend.*

The court's protective powers extend to every device whereby property is irreparably damaged or interstate commerce restrained; otherwise the Anti-trust Act would be rendered impotent. *Gompers v. Bucks Stove & Range Co.*, 418.

13. *Contracts and combinations within prohibition of Anti-trust Act of 1890.*

The Anti-trust Act of July 2, 1890, c. 647, 26 Stat. 209, should be construed in the light of reason; and, as so construed, it prohibits all contracts and combinations which amount to an unreasonable or undue restraint of trade in interstate commerce. *Standard Oil Co. v. United States*, 1.

14. *Contracts and combinations within prohibition of Anti-trust Act of 1890.*

The Anti-trust Act must have a reasonable construction as there can



scarcely be any agreement or contract among business men that does not directly or indirectly affect and possibly restrain commerce. (*United States v. Joint Traffic Association*, 171 U. S. 505, 568.) *United States v. American Tobacco Co.*, 106.

15. *Combination held within prohibition of act of 1890.*

The combination of the defendants in this case is an unreasonable and undue restraint of trade in petroleum and its products moving in interstate commerce, and falls within the prohibitions of the act as so construed. *Standard Oil Co. v. United States*, 1.

16. *Combination held within prohibition of Anti-trust Act.*

In this case the combination in all its aspects both as to stock ownership, and as to the corporations independently, including foreign corporations to the extent that they became coöperators in the combination, come within the prohibition of the first and second sections of the Anti-trust Act. *United States v. American Tobacco Co.*, 106.

17. *Combination held within prohibition of act of 1890.*

*Standard Oil Co. v. United States*, ante, p. 1, followed and reaffirmed as to the construction to be given to the Anti-trust Act of July 2, 1890, c. 647, 26 Stat. 209; and held that the combination in this case is one in restraint of trade and an attempt to monopolize the business of tobacco in interstate commerce within the prohibitions of the act. *Ib.*

18. *Combination held within prohibition of Anti-trust Act.*

The record in this case discloses a combination on the part of the defendants with the purpose of acquiring dominion and control of interstate commerce in tobacco by methods and manners clearly within the prohibition of the Anti-trust Act; and the subject-matters of the combination and the combination itself are not excluded from the scope of the act as being matters of intrastate commerce and subject to state control. *Ib.*

19. *Combinations involving production of commodities within State; effect of application of Anti-trust Act as to.*

The application of the Anti-trust Act to combinations involving the production of commodities within the States does not so extend the power of Congress to subjects dehors its authority as to render the statute unconstitutional. *United States v. E. C. Knight Co.*, 156 U. S. 1, distinguished. *Standard Oil Co. v. United States*, 1.

20. *Combination over product of commodity; effect on application of Anti-trust Act of exclusion of crude article from combination.*

The fact that a combination over the products of a commodity such as petroleum does not include the crude article itself does not take the combination outside of the Anti-trust Act when it appears that the monopolization of the manufactured products necessarily controls the crude article. *Ib.*

21. *Corporation a "person" within meaning of Anti-trust Act.*

The word "person" in § 2 of the Anti-trust Act, as construed by reference to § 8 thereof, implies a corporation as well as an individual. *Ib.*

22. *Boycotts and blacklisting as unlawful combinations within meaning of Anti-trust Act of 1890.*

The Anti-trust Act of 1890 applies to any unlawful combination resulting in restraint of interstate commerce including boycotts, and blacklisting whether made effective by acts, words or printed matter. *Gompers v. Bucks Stove & Range Co.*, 418.

23. *Combinations which are unobjectionable.*

Society itself is an organization and does not object to organizations for social, religious, business, and all other legal purposes. *Ib.*

24. *Presumption of illegal combination; what sufficient to raise.*

The unification of power and control over a commodity such as petroleum, and its products, by combining in one corporation the stocks of many other corporations aggregating a vast capital gives rise, of itself, to the *prima facie* presumption of an intent and purpose to dominate the industry connected with, and gain perpetual control of the movement of, that commodity and its products in the channels of interstate commerce in violation of the Anti-trust Act of 1890, and that presumption is made conclusive by proof of specific acts such as those in the record of this case. *Standard Oil Co. v. United States*, 1.

25. *Universality of prohibition of contracts modified to exclude reasonable ones.*

The original doctrine that all contracts in restraint of trade were illegal was long since so modified in the interest of freedom of individuals to contract that the contract was valid if the resulting restraint was only partial in its operation and was otherwise reasonable. *Ib.*

26. *Standard of reason in interpretation of Anti-trust Act of 1890.*

The Anti-trust Act contemplated and required a standard of inter-

pretation, and it was intended that the standard of reason which had been applied at the common law should be applied in determining whether particular acts were within its prohibitions. *Ib.*

27. *Rule of reason in construction of Anti-trust Act; effect of prior decisions on application of rule.*

In prior cases where general language has been used, to the effect that reason could not be resorted to in determining whether a particular case was within the prohibitions of the Anti-trust Act, the unreasonableness of the acts under consideration was pointed out and those cases are only authoritative by the certitude that the rule of reason was applied; *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, and *United States v. Joint Traffic Association*, 171 U. S. 505, limited and qualified so far as they conflict with the construction now given to the Anti-trust Act of 1890. *Ib.*

28. *Rule of reason in construction of Anti-trust Act; effect of prior decisions on application of rule.*

In *Standard Oil Co. v. United States*, ante, p. 1, the words "restraint of trade" as used in § 1 of the Anti-trust Act were properly construed by the resort to reason; the doctrine stated in that case was in accord with all previous decisions of this court, despite the contrary view at times erroneously attributed to the expressions in *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, and *United States v. Joint Traffic Association*, 171 U. S. 505. *United States v. American Tobacco Co.*, 106.

29. *Determination of what constitutes; scope of consideration.*

Allegations as to facts occurring prior to the passage of the Anti-trust Act may be considered solely to throw light on acts done after the passage of the act. *Standard Oil Co. v. United States*, 1.

30. *Scope of words used in § 2 of Anti-trust Act.*

The words "to monopolize" and "monopolize" as used in § 2 of the Anti-trust Act reach every act bringing about the prohibited result. *Ib.*

31. *Commerce contemplated by § 2 of Anti-trust Act.*

The commerce referred to by the words "any part" in § 2 of the Anti-trust Act, as construed in the light of the manifest purpose of that act, includes geographically any part of the United States and also any of the classes of things forming a part of interstate or foreign commerce. *Ib.*

32. *Remedy in case of unlawful combination.*

The remedy to be administered in case of a combination violating the

Anti-trust Act is two-fold: first, to forbid the continuance of the prohibited act, and second, to so dissolve the combination as to neutralize the force of the unlawful power. *Ib.*

33. *Remedy in case of unlawful combination; considerations in determining.*

In determining the remedy against an unlawful combination, the court must consider the result and not inflict serious injury on the public by causing a cessation of interstate commerce in a necessary commodity. *Ib.*

34. *Remedy in case of unlawful combination; considerations in determining.*

In giving relief against an unlawful combination under the Anti-trust Act the court should give complete and efficacious effect to the prohibitions of the statute; accomplish this result with as little injury as possible to the interest of the general public; and have a proper regard for the vested property interests innocently acquired. *United States v. American Tobacco Co.*, 106.

35. *Remedy in case of unlawful combination; rights of constituents.*

The constituents of an unlawful combination under the Anti-trust Act should not be deprived of power to make normal and lawful contracts, but should be restrained from continuing or recreating the unlawful combination by any means whatever; and a dissolution of the offending combination should not deprive the constituents of the right to live under the law but should compel them to obey it. *Standard Oil Co. v. United States*, 1.

36. *Remedy in case of unlawful combination; application to be given Anti-trust Act of 1890.*

In order to meet such a situation as is presented by the record in this case and to afford the relief for the evils to be overcome, the Anti-trust Act of 1890 must be given a more comprehensive application than affixed to it in any previous decision. *United States v. American Tobacco Co.*, 106.

37. *Remedy; injunction pending dissolution.*

Pending the achievement of the result decreed all parties to the combination in this case should be restrained and enjoined from enlarging the power of the continuation by any means or device whatever. *Ib.*

38. *Remedy in case of unlawful combination; scope of decree in this court.*

In this case the combination in and of itself, and also all of its con-

stituent elements, are decreed to be illegal, and the court below is directed to hear the parties and ascertain and determine a plan or method of dissolution and of recreating a condition in harmony with law, to be carried out within a reasonable period (in this case not to exceed eight months), and, if necessary, to effectuate this result either by injunction or receivership. *Ib.*

## REVENUE LAWS.

*See* CUSTOMS LAW.

## RIPARIAN RIGHTS.

1. *Rights presumed in waters flowing through more than one State.*

Where streams flow through more than one State, it will be presumed, in the absence of legislation on the subject, that each allows the same rights to be acquired from outside the State as could be acquired from within. *Bean v. Morris*, 485.

2. *Appropriation of waters; where doctrine prevails.*

The doctrine of appropriation has always prevailed in that region of the United States which includes Wyoming and Montana; it was recognized by the United States before, and by those States since, they were admitted into the Union and the presumption is that the system has continued. *Ib.*

3. *Appropriation of waters sustained.*

In this case an appropriation validly made under the laws of Wyoming is sustained as against riparian owners in Montana. *Ib.*

*See* STATES, 5.

## RIVERS.

*See* NAVIGABLE WATERS;

RIPARIAN RIGHTS;

STATES, 5;

## SALES.

*See* INDIANS, 5, 7.

## SALINE LANDS.

*See* PUBLIC LANDS, 3, 4.

## SAVINGS BANKS.

*See* CONSTITUTIONAL LAW, 13, 16;

PRACTICE AND PROCEDURE, 4.



## STATES.

1. *Abandoned property; power to legislate concerning.*

The State has power to legislate in regard to the preservation and disposition of abandoned property and to establish presumptions of abandonment after lapse of reasonable period. (*Cunnius v. Reading*, 198 U. S. 454.) *Provident Savings Institution v. Malone*, 660.

2. *Admission into Union; conditions which Congress may impose in enabling act.*

Congress may embrace in an enabling act conditions relating to matters wholly within its sphere of powers, such as regulations of interstate commerce, intercourse with Indian tribes and disposition of public lands, but not conditions relating wholly to matters under state control such as the location and change of the seat of government of the State. *Coyle v. Oklahoma*, 559.

3. *Admission into Union; power of Congress to impose conditions.*

No prior decision of this court sanctions the claim that Congress in admitting a new State can impose conditions in the enabling act, the acceptance whereof will deprive the State when admitted of any attribute of power essential to its equality with the other States. *Ib.*

4. *Power to regulate taking of natural product and to prohibit its transportation in interstate commerce.*

There is a distinction between the police power of the State to regulate the taking of a natural product, such as natural gas, and prohibiting that product from transportation in interstate commerce. The former is within, and the latter is beyond, the power of the State. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, distinguished. *Oklahoma v. Kansas Natural Gas Co.*, 229.

5. *Right to natural gas and oil not analogous to that to flowing waters.*

A State does not have the same ownership in natural gas and oil after the same have been reduced to possession as it does over the flowing waters of its rivers. Riparian owners have no title to the water itself as a commodity. *Hudson County Water Co. v. McCarter*, 209 U. S. 349, distinguished. *Ib.*

6. *Seat of government; power to locate beyond control of Congress.*

The power to locate its own seat of government, to change the same, and to appropriate its public money therefor, are essentially state powers beyond the control of Congress. *Coyle v. Oklahoma*, 559.

7. *Seat of government; powers in respect of; validity of provision in Oklahoma Enabling Act in respect of.*

The legislature of Oklahoma has power to locate its own seat of government, to change the same and to appropriate money therefor, notwithstanding any provisions to the contrary in the Enabling Act of June 16, 1906, 34 Stat. 267, c. 3335, and the ordinance irrevocable of the convention of the people of Oklahoma accepting the same. *Ib.*

<i>See</i> ACTIONS;	INTERSTATE COMMERCE, 2, 3, 5,
CONSTITUTIONAL LAW, 6,	6, 7;
12, 29-37;	PUBLIC LANDS, 3, 4, 10, 12;
CORPORATIONS, 1, 4;	RESTRAINT OF TRADE, 18, 19;
CRIMINAL LAW, 4, 5;	RIPARIAN RIGHTS, 1;
	TAXES AND TAXATION, 1-8, 10.

### STATUTES.

#### A. CONSTRUCTION OF.

1. *Subsequent legislation considered, when.*

While several acts of Congress are passed touching the same subject-matter, subsequent legislation may be considered to assist in interpretation of the prior legislation. *Tiger v. Western Investment Co.*, 286.

2. *Debates of enacting body resorted to, when.*

While debates of the body enacting it may not be used as means for interpreting a statute, they may be resorted to as a means of ascertaining the conditions under which it was enacted. *Standard Oil Co. v. United States*, 1.

3. *Departmental construction; persuasive effect of.*

Where a statute is so ambiguous as to render its construction doubtful the uniform practice of the officers of the Department whose duty has been to construe and administer the statute since its enactment and under whose constructions rights have been acquired is determinatively persuasive on the courts. *United States v. Hammers*, 220.

4. *Uncertainty; exceptions affecting validity on ground of.*

An exception in a statute of cases of emergency does not render a statute void for uncertainty where Congress has appropriately described the exceptional cases intended to be covered. *Baltimore & Ohio R. R. Co. v. Interstate Com. Comm.*, 612.

5. *Foreign statutes; duty of court to construe statute of another State in absence of allegation or proof that highest court of such State has done so.*

Where there is no allegation or proof that the highest court of a State



has construed a statute of that State, it becomes the duty of the courts of another State, which do not take judicial knowledge of decisions of other States, to construe the statute and its effect upon prior statutes according to their independent judgment. (*Louisville & Nashville R. R. Co. v. Melton*, 218 U. S. 36.) *Texas & New Orleans R. R. Co. v. Miller*, 408; *Texas & New Orleans R. R. Co. v. Gross*, 417.

6. *Review by this court of decision of state court construing foreign statute.* The decision of a state court construing a statute of another State under such circumstances is not subject to review by this court if no Federal right is involved. (*Eastern Building & Loan Assn. v. Ebaugh*, 185 U. S. 114.) *Ib.*

<i>See</i> COURTS;	PRACTICE AND PROCEDURE, 3;
EVIDENCE, 1;	PUBLIC LANDS, 2, 3, 4;
INDIANS;	PURE FOOD AND DRUG ACT;
LAND GRANTS;	RESTRAINT OF TRADE;
	SPAIN, 2.

#### B. STATUTES OF THE UNITED STATES.

*See* ACTS OF CONGRESS.

#### C. STATUTES OF THE STATES AND TERRITORIES.

*See* LOCAL LAW.

#### STOCKHOLDERS.

*See* NATIONAL BANKS.

#### STREET OPENING.

*See* FACTS;  
TAXES AND TAXATION, 11.

#### SUBPŒNA *DUCES TECUM*.

*See* CONSTITUTIONAL LAW, 25, 28;  
CORPORATIONS, 3, 4, 9;  
WRIT AND PROCESS.

#### TARIFF RATES.

*See* CUSTOMS LAW.

#### TAXES AND TAXATION.

1. *Credits on open account as property subject to.*  
Credits on open account are incorporeal and have no actual situs, but

they constitute property and as such are taxable by the power having jurisdiction. *Liverpool & L. & G. Ins. Co. v. Orleans Assessors*, 346.

2. *Credits, intangible; power of sovereignty of debtor's domicile to tax.*

The maxim of *mobilia sequuntur personam* yields to the fact of actual control; and jurisdiction to tax intangible credits exists in the sovereignty of the debtor's domicile, such credits being of value to the creditor because of the power given by such sovereignty to enforce the debt. *Blackstone v. Miller*, 188 U. S. 205. Such taxation does not deny due process of law. *Ib.*

3. *Credits taxable in place other than that of creditor's domicile and where he does business and such credits accrue.*

The jurisdiction of the State of the domicile over the creditor's person does not exclude the power of another State in which he transacts his business to tax credits there accruing to him from resident debtors, and thus, without denying due process of law, to enforce contribution to support the government under whose protection his affairs are conducted. *Ib.*

4. *Credits subject to taxation at place of debtor's domicile; overdue insurance premiums as.*

Premiums due by residents to a non-resident insurance company and which have been extended, but for which no written obligations have been given, are credits subject to taxation by the State where the debtor is domiciled; and so held that the statute of Louisiana to that effect is not unconstitutional as denying due process of law. *Ib.*

5. *Credits subject to taxation at place of debtor's domicile; overdue insurance premiums as.*

*Liverpool & London & Globe Insurance Co. v. Assessors*, ante, p. 346, followed as to right of State to tax insurance premiums due and extended by residents to non-resident companies although such premiums were due from local agents and not from policy-holders. *Orient Ins. Co. v. Assessors of Orleans*, 358.

6. *Credits, how evidenced, for purposes of.*

Credits need not be evidenced in any particular manner in order to render them subject to taxation. *Liverpool & L. & G. Ins. Co. v. Orleans Assessors*, 346.

7. *Remedies against excessive valuation must be availed of as prescribed.*

Where a state statute prescribes a method for review and reduction of

excessive valuation for taxes the remedy must be availed of within the prescribed period; and one not availing thereof in time cannot attack the assessment as depriving him of property without due process of law. *Orient Ins. Co. v. Assessors of Orleans*, 358.

8. *Remedies against; estoppel to ask for reduction in amount in suit for cancellation of entire assessment.*

In a suit for cancellation of an entire assessment as unconstitutional the plaintiff cannot ask for a reduction of amount if there is a proceeding under the state statute for that purpose and which he has not availed of. *Liverpool & L. & G. Ins. Co. v. Orleans Assessors*, 346.

9. *Credits subject to; excessive valuation of; quære as to raising of Federal question.*

*Quære* whether any Federal question was raised on this record as to excessive valuation of taxable credits; but the assessments not being nullities, plaintiffs in error have not been deprived of their property without due process of law. *Orient Ins. Co. v. Assessors of Orleans*, 358.

10. *Assessments; actions for reduction; power of State to fix time for.*

A State has power to fix a reasonable time within which actions for reduction of assessments must be taken. (*Kentucky Union Co. v. Kentucky*, 219 U. S. 156.) *Ib.*

11. *Special assessments in District of Columbia; power of Congress as to.*  
Congress, under its wide legislative power over the District of Columbia, may create a special assessment district and charge a part or all of the cost of a public improvement upon the property therein according to the benefits received. *Briscoe v. District of Columbia*, 547.

See CONSTITUTIONAL LAW, 11;

PHILIPPINE ISLANDS, 7;

PUBLIC LANDS, 10, 12.

## TESTAMENTARY LAW.

*Publication for unknown heirs in probate proceeding; § 130 of Code of District of Columbia, as amended, construed.*

Under § 130 of the Code of the District of Columbia as amended by the act of June 30, 1902, 32 Stat. 526, c. 1329, there is no failure of jurisdiction because publication for unknown heirs has not been made, unless the record shows the actual or probable existence of persons who were heirs at law or next of kin whose names were

unknown; nor will proceedings duly had be vacated at the instance of one who was cited, and whose objections to probate have been overruled, and who does not show that there are any unknown heirs or next of kin or that there is any occasion to make such publication. *Lewis v. Luckett*, 554.

See INDIANS, 6.

#### TITLE.

See BANKRUPTCY;  
PUBLIC LANDS, 11, 12.

#### TORTS.

See ACTIONS;  
CONSTITUTIONAL LAW, 33.

#### TRADE.

See RESTRAINT OF TRADE.

#### TRADE-MARKS.

##### 1. *Geographical name appropriable as; "Chartreuse" held to be.*

While names which are merely geographical cannot be exclusively appropriated as trade-marks, a geographical name which for a long period has referred exclusively to a product made at the place and not to the place itself may properly be used as a trade-mark; and so held that the word "Chartreuse" as used by the Carthusian Monks in connection with the liqueur manufactured by them at Grande Chartreuse, France, before their removal to Spain, was a validly registered trade-mark in this country. *Baglin v. Cusenier Co.*, 580.

##### 2. *Foreign law; extra-territorial effect of.*

The law of a foreign country has no extra-territorial effect to detach a trade-mark validly registered in this country from the product to which it is attached. *Ib.*

##### 3. *Abandonment; non-user, effect of.*

Non-user of a trade-mark, or the use of new devices, does not afford a basis for the penalty of loss of right thereto by abandonment; abandonment will not be inferred in the absence of intent, and a finding of intent must be supported by adequate facts. *Ib.*

##### 4. *Use of geographical name validly registered as.*

While one may use the name of the place where he manufactures an article, in order to show where it is manufactured, and may state all the facts in regard to his succession, under the law of a foreign

country, to property of parties formerly manufacturing an article similar in many respects, he cannot, in this country, use the name of the place to designate the article if that name has been validly registered as a trade-mark here; and so *held* that the liquidator appointed in France of the property of the Carthusian Monks could not, in this country, use the word "Chartreuse" to designate the liqueur manufactured by him at Grande Chartreuse, the Carthusian Monks having validly registered that name in the United States as a trade-mark of the liqueur manufactured by them. *Ib.*

5. *Use of; right of other than owner.*

A validly registered trade-mark cannot be used by anyone other than the owner, even with words explaining that the article to which it is attached is not manufactured by the owner of the trade-mark. *Ib.*

*See* CONTEMPT OF COURT, 5.

TRADE-NAME.

*Right to use of name of originator of article.*

Where the name of the originator has not left him to travel with the goods the name remains with the manufacturer, as an expression of source and not of character. *Jacobs v. Beecham*, 263.

*See* UNFAIR TRADE, 1, 2, 3.

TRAFFIC CONDITIONS.

*See* JUDICIAL NOTICE.

TREATIES.

*See* CUSTOMS LAW, 1-6;  
EXTRADITION, 4.

TRIAL.

*See* EVIDENCE, 2;  
EXTRADITION, 5;  
PHILIPPINE ISLANDS, 5.

TRIAL BY JURY.

*See* PHILIPPINE ISLANDS, 2.

TRUSTS AND TRUSTEES.

*See* INDIANS, 3;  
PUBLIC LANDS, 13.

## UNFAIR TRADE.

1. *Use of trade-name constituting.*

The word "Beecham's" as used in connection with pills manufactured by the party of that name is not generic as to the article manufactured but individual as to the producer; and one calling his product by the same name is guilty of unfair trade even if he states that he, and not Beecham, makes them. *Jacobs v. Beecham*, 263.

2. *Use of trade-name; burden to justify use.*

The burden is on a defendant who uses plaintiff's trade-name to justify the using thereof. *Ib.*

3. *Use of trade-name; evidence as to identity of article manufactured under secret formula.*

Even if the burden of proof is on one manufacturing a named article under a secret formula to prove that one selling an article by the same name is not manufacturing under that formula, there is a *prima facie* presumption of difference, which protects the owner without requiring him to give up the secret. *Ib.*

4. *Use of word "patent"; effect to infer that article is patented.*

The word "patent" as used in connection with medicines does not mean that the article is patented but that it is proprietary; and there is no fraud on the public in using the word in that sense although the article has not been patented. *Ib.*

5. *Protection against; effect, to deprive of, of misstatements harmless to public.*

The proprietor of a valuable article will not be deprived of protection against unfair trade because of certain trivial misstatements as to place of manufacture and Christian name of manufacturer when both statements were true at one time and it does not appear that the public have been improperly misled. *Ib.*

## UNITED STATES.

*See* INDIANS, 3, 4, 8, 10;  
INTERSTATE COMMERCE, 1;  
PUBLIC LANDS, 11, 12.

## UNREASONABLE SEARCHES AND SEIZURES.

*See* CONSTITUTIONAL LAW, 25, 38.

## UTAH.

*See* PUBLIC LANDS, 3.

VARIANCE.

*See* EXTRADITION, 8, 9.

WAIVER.

*See* CONSTITUTIONAL LAW, 28.

WATERS.

*See* NAVIGABLE WATERS;  
RIPARIAN RIGHTS;  
STATES, 5.

WILLS.

*See* INDIANS, 6;  
TESTAMENTARY LAW.

WITNESSES.

1. *Immunity; meaning of provision of § 860, Rev. Stat.*

Section 860, Rev. Stat., providing that no pleading or discovery obtained from a party or witness by means of judicial proceeding shall be used against him in any criminal proceeding, relates to using the evidence in a subsequent proceeding. *American Lithographic Co. v. Werckmeister*, 603.

2. *Refusal to answer before grand jury.*

*Hale v. Henkel*, 201 U. S. 43, followed to effect that a witness properly subpoenaed cannot refuse to answer questions propounded by the grand jury on the ground that there is no cause or specific charge pending. *Wilson v. United States*, 361.

*See* CONSTITUTIONAL LAW, 19-28; PHILIPPINE ISLANDS, 5;  
CORPORATIONS, 8, 9; WRIT AND PROCESS, 6.

WORDS AND PHRASES.

*"And including."*

The words "and including" following a description do not necessarily mean "in addition to," but may refer to a part of the thing described. *Montello Salt Co. v. Utah*, 452.

*"Any Part"* in reference to commerce, as used in § 2 of Anti-trust Act (see Restraint of Trade, 3). *Standard Oil Co. v. United States*, 1.

*"Country"* as used in revenue laws (see Customs Law, 3). *Faber v. United States*, 649.

*"Imports"* and *"exports"* (see Customs Law, 5). *Faber v. United States*, 649.

"*Misbranded*" as used in Pure Food and Drug Act (see Pure Food and Drug Act). *United States v. Johnson*, 488.

"*Patent*" as used in connection with medicines (see Unfair Trade, 4). *Jacobs v. Beecham*, 263.

"*Person*" as used in Anti-trust Act (see Restraint of Trade, 21). *Standard Oil Co. v. United States*, 1.

"*Restraint of trade*" and "*Attempts to monopolize*" as used in Anti-trust Act (see Restraint of Trade, 1, 9). *Standard Oil Co. v. United States*, 1.

"*To monopolize*" and "*monopolize*" as used in Anti-trust Act (see Restraint of Trade, 30). *Standard Oil Co. v. United States*, 1.

"*Trial*" as used in § 724, Rev. Stat. (see Evidence, 2). *Carpenter v. Winn*, 533.

#### WRIT OF ERROR.

See APPEAL AND ERROR, 2.

#### WRIT AND PROCESS.

##### 1. *Subpœna duces tecum; ad testificandum clause not essential.*

The *ad testificandum* clause is not essential to the validity of a subpœna *duces tecum*, and the production of papers by one having them under his control may be enforced independently of his testimony. *Wilson v. United States*, 361.

##### 2. *Subpœna duces tecum; amenability of corporations to.*

Corporate existence implies amenability to legal powers, and a subpœna *duces tecum* may be directed to a corporation. *Ib.*

##### 3. *Subpœna duces tecum; defense of one responding to.*

The right of one responding to a subpœna *duces tecum* to show why he need not produce does not depend on the *ad testificandum* clause, but is incidental to the requirement to produce. *Ib.*

##### 4. *Subpœna duces tecum; proof of papers.*

Where the subpœna *duces tecum* contains the usual *ad testificandum* clause it is not necessary to have the person producing the papers sworn as a witness. The papers may be proved by others. *Ib.*

##### 5. *Subpœna duces tecum; power of Federal courts to issue.*

The authority to issue writs conferred on courts of the United States



by § 14 of the Judiciary Act of 1789, and § 716, Rev. Stat., includes the authority to issue subpoenas *duces tecum*; and it was not the purpose of § 724, Rev. Stat., to interpose an obstacle with respect to the issuance of such subpoenas. *American Lithographic Co. v. Werckmeister*, 603.

6. *Subpoena duces tecum*; issuance to parties to action; Rev. Stat., § 858, applied.

The act of July 2, 1864, c. 210, § 3, 13 Stat. 351, now Rev. Stat., § 858, removing disabilities of witnesses on account of being parties to the action removed whatever obstacle existed as to issuing subpoenas *duces tecum* to parties. *Ib.*

See CONSTITUTIONAL LAW, 25, 28;

CORPORATIONS, 3, 9;

INJUNCTION.